

## CESSATION OF INCOME SUPPORT FOR PEOPLE IN PSYCHIATRIC CONFINEMENT

### Talking Points

- People confined in prisons or held in psychiatric institutions who have been convicted of a crime, or who are being held on remand until trial are not eligible for social security payments.
- People who are confined in a psychiatric institution due to criminal charges, but who have not been convicted, are also not eligible for social security payments.
  - The exception is if the person is in psychiatric confinement and is doing a course of rehabilitation, in which case they can be paid.
- Announced in MYEFO, from 1 July 2015 (subject to legislation), people who are confined in a psychiatric institution due to serious criminal charges will not be able to receive social security benefits, even if they are doing a course of rehabilitation.
- Legislation was introduced to Parliament on 25 March 2015.
- This change will ensure the same social security treatment of people confined due to serious criminal charges whether they reside in a psychiatric or penal institution.
- This change will only apply to those confined due to serious criminal charges.

## BACKGROUND

Under social security law:

- people confined in prison under state and territory law because they have been convicted of a crime are not eligible for social security payments;
- people charged with a crime and held on remand until trial are not eligible for social security payments; and
- people who are in psychiatric confinement because they have been charged with a criminal offence, but have been found not guilty or unfit to stand trial due to mental incapacity are not eligible for social security payments.
  - Social security payments can, however, be paid to people in psychiatric confinement because they have been charged with a crime, so long as they are participating in a ‘course of rehabilitation’.
  - Due to a Federal Court decision (below), this in effect means that anyone who is confined in a psychiatric institution due to criminal charges is eligible to be paid social security payments.

A judgement by the Federal Court in 2002 (Franks vs Secretary of FACS 2002) found that a course of rehabilitation can include a broad spectrum of treatments and it is likely that anyone confined to a psychiatric institution would meet this requirement. Prior to 2002, most people in this situation could not receive social security payments.

There are two issues that need to be resolved before the drafting of legislation:

- the term ‘serious’ needs to be defined in relation to criminal charges, and
- [Section 47C](#)

It should be noted that for other people on remand or incarcerated in state institutions after being found guilty of a crime, the seriousness of the crime has no bearing on the non-payment of income support.

The department is currently undertaking consultations with the appropriate state and territory authorities, as well as other stakeholders, to inform the drafting of the legislation.

[Section 22](#)